

June 9 2010

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA  
CASE NO. DA 09-0659

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C.A. GRENZ,  
Petitioner and Appellee

FILED

JUN - 9 2010

-VS-

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

MONTANA DEPARTMENT OF NATURAL RESOURCES AND  
CONSERVATION,  
Respondent and Appellant,

and JOHN AND ANGELA HEITZ,  
Respondents.

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On Appeal from the Montana Sixteenth Judicial District Court, Garfield County  
The Honorable Gary Day, Presiding  
Garfield County District Court Cause No. DV-17-2008-2911

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APPELLEE'S MOTION TO STRIKE REPLY BRIEF  
OF APPELLANT AS UNTIMELY FILED

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**COMES NOW**, the Appellee, and moves the Court to strike Appellant's  
Reply Brief filed herein on June 3, 2010, as untimely filed under Rule 13(1)  
M.R.App.P..

Rule 13(1) provides that an Appellant may serve and file a reply brief  
within 14 days after service of the brief of the Appellee. Appellee served his brief  
on Appellant on May 5, 2010 and it was received by Appellant on May 6, 2010.  
The time in which to file a discretionary reply brief fully expired on May 20, 2010.  
Appellant did not file its reply brief until June 3, 2010, 14 days after the time for

filing under Rule 13(1) had expired. Counsel for the Appellee was notified of the filing of the Appellant's Reply Brief on June 7, 2010.

While counsel did not locate any Montana cases on untimely filing of a reply brief, other jurisdictions have held that striking the brief from the record is the appropriate remedy. *Hedworth v. Chapman*, 132 Ind.App. 222, 177 N.E.2d 44 (Ind., 1961) [reply brief filed 1 day late]; *Connell v. Mittendorf*, 147 So.2d 169, 170 (Fla. App., 1962) [reply brief filed 14 days late]

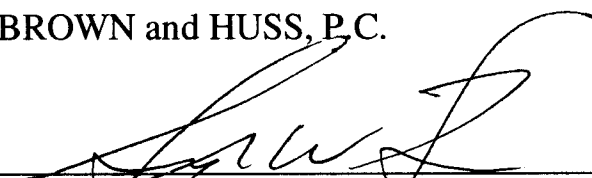
Counsel has contacted counsel for the Department of Natural Resources and was informed that he does not object to this motion.

#### RELIEF REQUESTED

Appellee requests that this Court enter an order striking the reply brief of appellant from the record.

DATED this 8th day of June, 2010.

BROWN and HUSS, P.C.

By:   
George W. Huss, a member of the firm  
Office and Post Office Address:  
507 Pleasant Street - P.O. Box 128  
Miles City, Montana 59301-0128  
Attorney for Petitioner and Appellee, C. A.  
Grenz

**CERTIFICATE OF SERVICE**

**THIS IS TO CERTIFY** that the foregoing was duly served, postage prepaid first class, to the following:

Tommy H. Butler  
Special Assistant Attorney General  
Montana DNRC  
P.O. Box 201601  
Helena, Montana 59620

Casey Heitz  
Parker, Heitz & Cosgrove, PLLC  
P.O. Box 7212  
Billings, Montana 59103-7212

DATED this 8th day of June, 2010.

BROWN and HUSS, P.C.

By: 

George W. Huss, a member of the firm  
Office and Post Office Address:  
507 Pleasant Street - P.O. Box 128  
Miles City, Montana 59301-0128  
Attorney for Petitioner and Appellee, C. A. Grenz